

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PHILIP ANGUS, MARK WIEDDER,
TANIA GARCIA, EDWARD
BURDICK, RAY HARTER,
DANIELLE MEIS, JONTHAN
KELLEY, RYAN MARTIN, ARTHUR
DORE, ANN KELLY, and KEITH
KELLY,

on behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

FLAGSTAR BANK, FSB,
a Michigan-based federally chartered
stock savings bank,

Defendant.

Case No.: 2:21-cv-10657-AJT-DRG

**MOTION TO APPOINT INTERIM
LEAD COUNSEL**

Plaintiffs Philip Angus, Mark Wiedder, Tania Garcia, Edward Burdick, Ray Harter, Danielle Meis, Jonathan Kelley, Ryan Martin, Arthur Dore, Ann Kelly, and Keith Kelly (“Plaintiffs”) hereby move the Court under Rule 23(g)(3) of the Federal Rules of Civil Procedure for an Order designating John A. Yanchunis (Morgan & Morgan Complex Litigation Group) as Interim Lead Counsel; and Terence R. Coates (Markovits, Stock & DeMarco, LLC), Jeffrey S. Goldenberg (Goldenberg Schneider

LPA), Gary E. Mason (Mason Lietz & Klinger, LLP), Charles E. Schaffer (Levin, Sedran & Berman, LLP), M. Anderson Berry (Clayco C. Arnold, a Professional Law Corp.), Brian D. Flick (DannLaw), and Bryan Bleichner (Chestnut Cambronne PA) as Interim Executive Committee members (collectively, “Proposed Interim Class Counsel”).

This motion is based on the accompanying Memorandum of Law in Support of Plaintiffs’ Motion for Appointment of Interim Class Counsel, including Interim Lead Counsel and Interim Executive Committee under Fed. R. Civ. P. 23(g)(3) and exhibits thereto for the Court’s consideration.

Certificate of Compliance with LR 7.1(a)(2)(A)

The undersigned conferred with Defendant’s counsel regarding the relief sought in this motion but did not obtain concurrence in the relief sought.

Respectfully submitted,

/s/ John A. Yanchunis

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Proposed Interim Class Counsel

**Admission Forthcoming*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 22, 2021, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ John A. Yanchunis
John A. Yanchunis

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
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FLAGSTAR BANK, FSB,
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**MEMORANDUM IN SUPPORT OF
MOTION TO APPOINT INTERIM
LEAD COUNSEL**

Plaintiffs Philip Angus, Mark Wiedder, Tania Garcia, Edward Burdick, Ray Harter, Danielle Meis, Jonathan Kelley, Ryan Martin, Arthur Dore, Ann Kelly, and Keith Kelly (“Plaintiffs”) submit this Memorandum of Law in support of Plaintiffs’ Motion to Appoint of Interim Lead Counsel pursuant to Fed. R. Civ. P. 23(g)(3).

I. INTRODUCTION

Federal Rule of Civil Procedure 23(g)(3) permits the appointment of interim class counsel “to act on behalf of a putative class” where “the action has not yet been certified as a class action.” *In re Mercy Health ERISA Litig.*, No. 1:16-cv-441,

2016 WL 8542891, at *2 (S.D. Ohio Dec. 2, 2016) (quoting Fed. R. Civ. P. 23(g)(3)). “Designation of lead counsel now ensures the protection of the interests of the class in making and responding to motions, conducting discovery, and negotiating possible settlements.” *Szymczak v. Nissan N. Am., Inc.*, Nos. 10 CV 7493(VB), 12 CV 1495(VB), 12 CV 2149(VB), 2012 WL 1877306, at *1 (S.D.N.Y. May 15, 2012) (citing MANUAL FOR COMPLEX LITIG. § 21.11 (4th ed. 2004)).

Plaintiffs respectfully request that the Court designate John Yanchunis (Morgan & Morgan Complex Litigation Group) as Interim Lead Counsel; and Zachary C. Schaengold (Markovits, Stock & DeMarco, LLC), Jeffrey S. Goldenberg (Goldenberg Schneider LPA), Gary E. Mason (Mason Lietz & Klinger, LLP), Charles E. Schaffer (Levan, Sedran & Berman, LLP), Anderson Berry (Clayco C. Arnold, a Professional Law Corp.), Brian D. Flick (DannLaw), and Bryan Bleichner (Chestnut Cambronne PA) as Interim Executive Committee Members (collectively, “Proposed Interim Class Counsel”).

Plaintiffs propose that Interim Lead Counsel, in consultation with the Interim Executive Committee, have responsibility for strategic decisions associated with the prosecution of these consolidated cases (and any subsequently filed consolidated cases). As described below, this proposed leadership structure has the support of the above Plaintiffs and the firms involved in this litigation, and it will permit Plaintiffs to prosecute this case efficiently and in the best interests of the putative class. In

addition, Proposed Interim Class Counsel are a diverse group who have performed substantial work investigating the circumstances surrounding the breach that is at the heart of this case, including the retention of experienced experts in this area on both liability and damages. These same lawyers also have extensive experience litigating these claims and have the experience, knowledge, and resources to continue to prosecute this action in the putative class's best interests, including substantial experience litigating privacy and data breach class actions.

II. BACKGROUND

This litigation arises out of Defendant Flagstar Bank, FSB's ("Flagstar" or the "Company") alleged failure to exercise reasonable care to safeguard Plaintiffs' and absent class members' personally identifiable information ("PII"). Despite its heightened risk for data breach vulnerabilities as a bank, Plaintiffs allege Flagstar did not have appropriate measures in place to protect against a breach. *See, e.g.*, Angus Complaint (Doc. 1) ¶¶ 11. As a result, in January 2021, the Company learned that it had experienced a serious data breach. *See id.* ¶ 4. After Flagstar became aware of this breach, it took another month before it began informing the victims. *Id.* ¶ 23. The information that Flagstar permitted to be breached was comprehensive and included Flagstar's customers' PII, including names, Social Security numbers, home addresses, phone numbers, dates of birth, and/or financial account numbers. *Id.* ¶ 1.

From March 25, 2021 to April 7, 2021, three consumer class actions were

filed in this District by separate groups of lawyers asserting claims arising out of this data breach. Given the nature of the harm in this case, Plaintiffs anticipate that additional copy-cat suits may be filed against Flagstar.¹ As discussed in more detail below, Plaintiffs' counsel have self-organized and created a leadership structure that includes counsel from each of the consolidated cases. Through this motion, Plaintiffs' counsel seek the Court's approval of this structure to facilitate the prosecution of this litigation in an orderly and expeditious manner.

III. APPLICABLE LAW

Rule 23(g)(3) provides that the Court “may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.” Fed. R. Civ. P. 23(g)(3). “[D]esignation of interim counsel clarifies responsibility for protecting the interests of the class during precertification activities[.]” MANUAL FOR COMPLEX LITIG. § 21.11; *see also In re Am. Honda Motor Co., Inc.*, No. 2:15-MD-2661, 2015 WL 12723036, at *1 (S.D. Ohio Dec. 18, 2015) (same). Indeed, the Advisory Committee Notes to Rule 23 recognize “that in many cases the need to progress toward the certification determination may *require* designation of interim counsel.” Fed. R. Civ. P. 23, advisory committee note to 2003 amendment (emphasis added).

¹ On May 19, 2021, a fourth case was filed in this District, *Hawkins v. Flagstar Bank*, No. 2:21-cv-11165.

“When placed in the position of selecting interim lead counsel, Courts customarily assess applicants under the rubrics for appointment of permanent class counsel” as set forth in Rule 23(g)(1)(A). *Am. Honda*, 2015 WL 12723036, at *1. Rule 23(g)(1)(A) provides, in relevant part, that in appointing class counsel the Court must consider:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel’s knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g)(1)(A). The Court may also consider “any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” Fed. R. Civ. P. 23(g)(1)(B). The purpose of the Court’s review is to ensure that counsel appointed to leading roles are “qualified and responsible, that they will fairly and adequately represent all the parties on their side, and that their charges will be reasonable.” MANUAL FOR COMPLEX LITIG. § 10.22. The ultimate goal is “achieving efficiency and economy without jeopardizing fairness to parties.” *Id.* § 10.221.

IV. ARGUMENT

Proposed Interim Class Counsel satisfy all requirements for appointment by the Court. These attorneys have successfully litigated numerous class actions

involving data breaches and privacy claims on behalf of millions of consumers. Proposed Interim Lead Counsel, as well as the members of the Proposed Interim Executive Committee, have the necessary resources to prosecute the litigation and are already working, and will continue to work, cooperatively to efficiently and effectively manage the litigation, as they have repeatedly done in the past. They will not rely at all upon litigation funding for any aspect of this case. Moreover, even before the litigation was commenced, they began an investigation outside formal discovery to develop an understanding of the vulnerability which led to the breach and the development of evidence to support liability. This investigation is aided by two former FBI agents, one of whom ran the Enron investigation for the FBI when he was an active agent with the Bureau. These individuals are a unique resource which will be used throughout the case. Experts have also been engaged on both liability and damages, experts who have extensive experience in many other data breach case. Finally, Proposed Interim Class Counsel have the case management and complex litigation skills, knowledge of the relevant factual and legal issues, and extensive resources needed to efficiently prosecute this action, Plaintiffs' motion should be granted.

A. Proposed Interim Class Counsel have performed substantial work investigating and litigating the claims.

Immediately after the public announcement of the data breach at Flagstar,

Proposed Interim Class Counsel began investigating potential legal claims and remedies for the victims of the breach, including Plaintiffs. Those investigations included, among other things:

- Investigating the facts surrounding the data breach;
- Interviewing numerous consumers injured by the data breach;
- Researching legal claims;
- Drafting initial pleadings;
- Investigating and retaining experts in the area of data security and damages, including seeking the advice of these experts on the issues and facts central to the case; and
- Organizing plaintiffs and counsel and consolidating the relevant actions for unified proceedings.

The facts alleged are egregious in terms of the information exposed and the scope of the victims. Accordingly, Plaintiffs' counsel worked to quickly organize, attempted to address the merits on an expedited basis, and avoided any delay that could be caused by a leadership dispute. A billing protocol will also be circulated and used by all counsel to ensure efficiency remains key, and duplication, if any, is at a minimum. Work assignments have been, and will continue to be, allocated fairly and in a manner that takes advantage of the strengths of each firm while eliminating any duplicity. As such, Proposed Interim Class Counsel now operate as a cohesive,

well-organized group and are working diligently and efficiently to draft and file the Consolidated Class Action Complaint as previously ordered by the Court (Doc. --). For the work completed following the informal organization of counsel, the only attorneys committing substantive time to an assignment are those necessary for its execution. This ensures that the work is completed efficiently, and the time and expense is well managed. Accordingly, the substantial work and investigation to date described above weigh in favor of appointing Proposed Interim Class Counsel under Rule 23(g)(3), as Proposed Interim Class Counsel are organized, unified, and committed to working together for the best interests of the class.

B. Proposed Interim Class Counsel Have Significant Relevant Experience

1. Interim Lead Class Counsel: John A. Yanchunis

Lead counsel will formulate (in consultation with other counsel) and present positions on substantive and procedural issues during the litigation. MANUAL FOR COMPLEX LITIG., § 10.221 (“Typically they act for the group—either personally or by coordinating the efforts of others—in presenting written and oral arguments and suggestions to the court, working with opposing counsel in developing and implementing a litigation plan, initiating and organizing discovery requests and responses, conducting the principal examination of deponents, employing experts, arranging for support services, and seeing that schedules are met.”). Plaintiffs propose that the Court designate John A. Yanchunis to be Interim Lead Counsel.

a. John A. Yanchunis

Mr. Yanchunis leads Morgan & Morgan's class action group, a successful and highly regarded nationwide practice focusing on class actions and complex consumer litigation. A detailed résumé is attached as **Exhibit A**. Morgan & Morgan is the largest plaintiffs-only law firms in the country, with over 700 lawyers in offices throughout the United States.

Mr. Yanchunis has been a trial lawyer for 39 years—a career that began after the completion of a two-year clerkship with United States District Judge Carl O. Bue (Southern District of Texas, now deceased). As a result of his experience in insurance and complex litigation, beginning in 2005, he was selected by Tom Gallagher, the Chief Financial Officer for the state of Florida and a member of the Florida Cabinet, to serve as lead counsel for the Florida Department of Financial Services and the Florida Department of Insurance Regulation (the insurance regulators of Florida) in their investigations of the insurance industry on issues concerning possible antitrust activity and other possible unlawful activities regarding the payment of undisclosed compensation to insurance brokers. He served as lead regulator counsel and worked with a core group of state Attorneys General from the National Association of Attorneys General, which were selected to conduct the investigations. The insurance regulator for Florida was the only insurance regulator in the group. The litigation that was filed and the related investigations netted millions of dollars in restitution for

Florida consumers and resulted in significant changes in the way commercial insurance is sold in Florida and across the country.

During his career, he has tried numerous cases in state and federal courts, including one of the largest and longest insurance coverage cases in U.S. history, which was filed in 1991 by the Celotex Corporation and its subsidiary, Carey Canada, Inc. During the seventeen years the case remained pending, he served as lead counsel for several insurance companies, regarding coverage for asbestos and environmental claims. The case was tried in three phases over several years beginning in 1992. He was also lead counsel for these parties in subsequent appeals that followed a judgment in favor of his clients.

Mr. Yanchunis began his work in privacy litigation in 1999 with the filing of *In re Doubleclick Inc. Privacy Litigation*, No. 00 CIV 0641 NRB (S.D.N.Y.), an action alleging privacy violations based on the placement of cookies on hard drives of internet users. Beginning in 2003, he served as co-Lead Counsel in the successful prosecution and settlement of privacy class action cases involving the protection of privacy rights of more than 200 million consumers under the Driver's Protection Privacy Act (DPPA) against the world's largest data and information brokers, including Experian, R.L. Polk, Acxiom, and Reed Elsevier (which owns Lexis/Nexis). *See Fresco v. Automotive Directions, Inc.*, No. 03-61063-JEM (S.D. Fla.); *Fresco v. R.L. Polk*, No. 07-cv-60695-JEM (S.D. Fla.). He also served as co-Lead Counsel in the DPPA class

cases, *Davis v. Bank of Am.*, No. 05-cv-80806 (S.D. Fla.) (\$10 million class settlement), and *Kehoe v. Fidelity Fed. Bank and Trust*, No. 03-cv-80593 (S.D. Fla.) (\$50 million class settlement).

Mr. Yanchunis personally has had leadership positions in many of the largest data breach cases filed: *In Re: Capital One Consumer Data Sec. Breach Litig.*, No. 19-md-2915 (E.D. Va.) (Co-Lead Counsel) (litigation ongoing, discovery closed, class certification pending); *In re Yahoo! Inc. Customer Data Sec. Breach Litig.*, No. 16-md-02752-LHK (N.D. Cal.) (Lead Counsel) (final approval of a settlement with a common fund of \$117,500,000 entered in May 2020); *In re Equifax, Inc. Customer Data Sec. Breach Litig.*, No. 17-md-2800-TWT (N.D. Ga.) (member of the Plaintiffs' Steering Committee) (final judgment approving largest data breach settlement in history was entered in December 2019); *Adkins v. Facebook, Inc.*, No. 18-cv-5982-WHA (N.D. Cal.) (co-lead counsel) (obtained highly contested certification of a Rule 23(b)(2) injunction class, final approval of a class action settlement has been entered); *In re U.S. Office of Pers. Mgmt. Data Sec. Breach Litig.*, No. 15-mc-01394-ABJ (D.D.C.) (member of the Executive Committee) (dismissal on standing grounds recently reversed on appeal to the D.C. Circuit); *In re The Home Depot, Inc. Consumer Data Sec. Data Breach Litig.*, No. 14-md-02583-TWT (N.D. Ga.) (co-Lead Counsel) (final judgment entered approving a settlement on behalf of a class of 40 million consumers with total value of \$29,025,000); *In re Target Corp. Customer Data Sec.*

Breach Litig., MDL No. 2522 (D. Minn.) (Executive Committee member) (final judgment approving a settlement on behalf of a class of approximately 100 million consumers upheld by the 8th Circuit). A comprehensive list of the data breach class cases which he has handled is included in Mr. Yanchunis' résumé. As set forth in his resume, he is a frequent speaker at national and international conference on the topic of privacy.

Mr. Yanchunis' experience in these major privacy matters extends far beyond simply leadership of teams of lawyers in the advancement of the litigation, briefing threshold issues and negotiating settlements. Mr. Yanchunis has personally deposed officers, corporate representatives, software engineers, data scientists and CISOs in cases such as *Capital One*, *Yahoo!* and *Facebook*. In *Yahoo!*, the defendants produced more than 9 million pages of documents, the plaintiffs deposed nine witnesses, and the plaintiffs provided reports for, and defended depositions of, their four expert witnesses. In *Capital One*, the number of depositions exceeds 30 to date. Mr. Yanchunis' *Yahoo!* and *Facebook* teams briefed both class certification and *Daubert* motions. Mr. Yanchunis will contribute the time and resources necessary for the litigation. His law firm has the resources necessary to prosecute this case; it is self-funded and do not (and will not here) use any third-party financing, litigating on a pure contingency basis.

Mr. Yanchunis and his law firm have reviewed the causes of action resulting from Flagstar's data breach and stand committed to assisting the Plaintiffs and their counsel in this litigation.

2. *Interim Executive Committee: Zachary C. Schaengold, Jeffrey S. Goldenberg, Gary E. Mason, Charles E. Schaffer, M. Anderson Berry, Brian D. Flick, and Bryan Bleichner.*

Executive committees, or steering committees, are useful where group members' interests and positions are sufficiently varying to justify giving them representation in decision making. MANUAL FOR COMPLEX LITIG. § 10.221 (4th ed. 2004).

- a. Zachary C. Schaengold

Zachary C. Schaengold is an attorney with Markovits, Stock & DeMarco, LLC (MSD) in Cincinnati, Ohio. Mr. Schaengold has been licensed to practice law in Ohio since 2013. From 2019 to the present, Mr. Schaengold has been recognized as a Super Lawyers® Rising Star with his current primary area of recognition being Class Action/Mass Tort cases. Mr. Schaengold and the MSD law firm have reviewed the causes of action resulting from Flagstar's data breach and stand committed to assisting the Plaintiffs and their counsel in this litigation. Mr. Schaengold's experience is further documented in **Exhibit B**.

- b. Jeffrey S. Goldenberg

Mr. Goldenberg, one of the co-founders of Goldenberg Schneider, LPA, has

been litigating complex civil actions for over 24 years. He has served as lead, co-lead, or class counsel in numerous successful MDLs and class actions. Mr. Goldenberg was appointed Interim Lead Counsel in *Culbertson et al v. Deloitte Consulting LLP*, a data exposure case involving approximately 240,000 unemployment applicants whose personal information was exposed when they applied for certain Pandemic Unemployment Assistance benefits through the Ohio, Illinois, and Colorado websites designed by Deloitte. Mr. Goldenberg and the leadership team, which includes Mr. Yanchunis and Mr. Schaffer, successfully resolved this litigation on a class-wide basis and will be seeking court approval for a substantial common fund settlement offering significant monetary benefits for the Class. Mr. Goldenberg's experience is further documented in **Exhibit C**.

c. Gary E. Mason

Mr. Gary Mason is a founding partner of Mason Lietz & Klinger LLP ("MLK"), a class action law firm based in Washington D.C. with a track record of successfully litigating and resolving class actions, including data breach class actions, on a nationwide basis for decades. Mr. Mason was the first attorney to successfully settle a privacy case on a class-wide basis against Google, as he served as Court-appointed lead counsel in *In re Google Buzz Privacy Litigation*, No. 5:10-cv-00672-JW (N.D. Cal.). Mr. Mason's experience is further documented in **Exhibit D**.

d. Charles E. Schaffer

Mr. Charles Schaffer, from the firm Levin Sedran & Berman (“LSB”), has over 25 years of experience, and is a nationally-recognized leader in complex and class action litigation, having been appointed Lead or Co-Lead counsel or committee member on a regular basis by federal courts across the country including in consumer class actions involving defective products, environmental contamination, data breaches, and unfair and deceptive practices. Undoubtedly, Lead Counsel and fellow members of the Executive Committee will benefit from his insight and experience in prosecuting and trying complex individual actions to jury verdicts. Mr. Schaffer’s experience is further documented in **Exhibit E**.

e. M. Anderson Berry

Mr. M. Anderson Berry heads the data breach and *qui tam* practices for Clayeo C. Arnold, A Professional Law Corporation (the “Arnold Law Firm”). Founded in 1975 by Clayeo C. Arnold, the Arnold Law Firm is a litigation-oriented practice in Sacramento, California, with ten attorneys. Mr. Berry brings substantial experience in complex litigation matters with a history of litigating in an efficient and practical manner, including as Lead and Co-Lead Class Counsel. Mr. Berry’s experience is further documented in **Exhibit F**.

f. Brian D. Flick

Mr. Brian D. Flick is a partner at DannLaw and the managing attorney of the

firm's Bankruptcy Practice Group, Consumer Litigation Group and Class Action Practice Group. Since 2008, DannLaw has represented individuals and businesses in a wide array of legal matters. The attorneys of DannLaw are established and respected trial lawyers who represent clients in simple litigation, complex litigation, appellate litigation, and class action lawsuits. DannLaw has recovered millions of dollars on behalf of thousands of individuals and businesses across the country including the states of Ohio, Illinois, Oregon, Florida, Kentucky, New Jersey and Tennessee. Mr. Flick has been selected as a Super Lawyers Rising Star since 2016 in Bankruptcy. Mr. Flick's experience is further documented in **Exhibit G**.

g. Bryan Bleichner

Bryan L. Bleichner is a shareholder at Chestnut Cambronne PA, an officer of the Antitrust Section of the National Federal Bar Association, a featured speaker at the National American Bar Association, and a current member of the Sedona Conference Working Group Series. Mr. Bleichner's experience is further documented in **Exhibit H**.

C. Proposed Interim Class Counsel have committed, and will continue to commit, the resources necessary to represent the class.

A court appointing interim lead counsel should consider, in part, the resources that counsel will commit to representing the putative class. Fed. R. Civ. P. 23(g)(1)(C). Here, Proposed Interim Class Counsel can, as needed, draw upon the

skills and talents of experienced attorneys and staff members located across the country. Each attorney understands the time, energy, and skill necessary to lead this litigation and all have committed the resources required to ensure the effective and efficient representation of the Class members. In fact, Proposed Interim Class Counsel have already demonstrated their commitment to this litigation by devoting substantial resources to this litigation and coordinating among themselves to file this leadership proposal for Plaintiffs' counsel and to draft the Consolidated Class Action Complaint. Proposed Interim Class Counsel are also expected to pay assessments when necessary to ensure that adequate funds are available to prosecute this litigation. And, as their firm resumes and counsels' experience indicate, Proposed Interim Class Counsel have the resources to see this litigation through to its conclusion, including trial.

D. Other Factors Support Designating Proposed Interim Class Counsel

Notably, the proposed leadership structure has the support of all the Plaintiffs and all the firms involved in the cases consolidated in this action. *See In re Aluminum Phosphide Antitrust Litig.*, No. 93-2452, 1994 WL 481847, at *5, 7 (D. Kan. May 17, 1994) ("In designating lead counsel, the court will also give due consideration to the preferences expressed by the parties themselves, through their counsel.... Absent persuasive evidence to the contrary, the court assumes that nominations and votes for lead counsel are made in good faith for reasons that

benefit the client.”); *see also In re Wendy’s Co. S’holder Derivative Litig.*, No. 1:16-cv-1153, 2018 WL 6605394 at *2 (S.D. Ohio Dec. 17, 2018) (“[C]ounsel’s ability to make inclusive efforts on behalf of all plaintiffs is an ‘essential attribute’ for lead counsel.” (internal quote omitted)); MANUAL FOR COMPLEX LITIG. §§ 10.22 (noting desirability of “the attorneys coordinat[ing] their activities without the court’s assistance”), 10.272 (describing “private ordering” approach). Indeed, Proposed Interim Class Counsel moved quickly to coordinate the proposed leadership structure to avoid any delay attendant with the multi-district litigation proceedings due to the egregious nature of Flagstar’s alleged unlawful conduct and likelihood of imminent further harms to Plaintiffs and the Class Members. Proposed Interim Class Counsel seek this leadership structure to best serve the interests of the Class Members in the most efficient manner possible.

Another important consideration in selecting leadership is the ability to work well as a team, with opposing counsel, and with the Court. The role of leadership in complex litigation places a premium on professionalism, cooperation, courtesy, and acceptance of the obligations owed as officers of the court, all of which are critical to successful management of the litigation. *See* MANUAL FOR COMPLEX LITIG. § 10.21. One of the demanding aspects of complex litigation is “the difficult[y] of having to communicate and establish effective working relationships with numerous attorneys (many of whom may be strangers to each other).” *Id.* Unlike defense

counsel, the plaintiffs’ side of consolidated litigation must quickly and effectively merge together to form an alliance against often well-financed opponents, as is the case here. This process has the potential for disorganization, in-fighting, and inefficiencies. It is useful to consider whether counsel applying for leadership “have worked together in other cases, their ability to collaborate in the past, divide work, avoid duplication, and manage costs.” Duke Guidelines, *supra*, at 43. Selecting lawyers who have previously worked together has many benefits. They have developed working relationships, know of complimentary talents, and have “developed certain systems for handling workflow and comparative advantages that will help expedite the case relative to a leadership committee working together for the first time.” *Id.*

Here, Proposed Lead Counsel has previously worked with many of the Proposed Interim Executive Committee members and their firms. Mr. Yanchunis and Mr. Berry have litigated numerous cases together, for example: *Llamas v. Truefire, LLC*, No. 8:20-cv-00857-WFJ-CPT (M.D. Fla.); *Warshawsky v. cbdMD, Inc.*, No. 3:20-cv-00562 (E.D. Va.); *Pfeiffer v. RadNet, Inc.*, No. 2:20-cv-09553-RGK-SK (C.D. Cal.); *Pygin, v. Bombas, LLC and Shopify*, No. 3:20-cv-04412 (N.D. Cal.); *A.A., v. AFTRA Retirement Fund*, No. 1:20-cv-11119-UA (S.D.N.Y.); and *In Re: Accellion, Inc., Customer Data Security Breach Litigation*, MDL No. 3002 (United States Judicial Panel on Multidistrict Litigation). *Id.*, ¶ 23. Mr. Yanchunis

and Mr. Berry are plaintiffs' counsel in the data breach class action titled, *In re: Hanna Andersson and Salesforce.com Data Breach Litig.*, No. 3:20-cv-00812-EMC (N.D. Cal.). Mr. Berry is plaintiffs' counsel in *Carrera Aguallo v. Kemper Corporation*, No. 1:21-cv-01883 (N.D. Ill.), along with Mr. Mason and Mr. Yanchunis' firm. *Id.*, ¶ 22.

Mr. Schaengold has experience working cooperatively with Mr. Goldenberg in numerous cases, including *In re Luxottica of America, Inc. Data Security Breach Litigation*, No. 1:20-cv-00908-MRB (S.D. Ohio) and *Linneman v. Vita-Mix Corp.*, No. 15-cv-748 (S.D. Ohio).

Mr. Flick has experience working cooperatively with Mr. Goldenberg in multiple cases in addition to the present matter, including a data breach matter to filed in Highland County, Ohio. In addition to working with Mr. Goldenberg, Mr. Flick has experience working cooperatively with Mr. Schaengold in the *Ryder* matter identified above.

Importantly, Proposed Interim Class Counsel have not made any agreements with each other with respect to funding, cost-sharing, pooling clients, fees, or any other matter. Proposed Interim Class Counsel understand that they will be required to make contributions to fund the litigation, and they will not accept any third-party funding to do so.

While Proposed Interim Class Counsel intend to litigate the case zealously,

they are fully aware of the Court's expectation that they prosecute the case efficiently and without duplication. Proposed Interim Class Counsel have already discussed how best to organize to effectively use its members' diverse skills and unique experiences for the efficient prosecution and management of this litigation, while avoiding unnecessary and duplicative billing.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court appoint John A. Yanchunis (Morgan & Morgan Complex Litigation Group) as Interim Lead Counsel; and Zachary C Schaengold (Markovits, Stock & DeMarco, LLC), Jeffrey S. Goldenberg (Goldenberg Schneider LPA), Gary E. Mason (Mason Lietz & Klinger, LLP), Charles E. Schaffer (Levin, Sedran & Berman, LLP), M. Anderson Berry (Clayco C. Arnold, a Professional Law Corp.), Brian D. Flick (DannLaw), and Bryan Bleichner (Chestnut Cambronne PA) as Interim Executive Committee members.

Respectfully submitted,

/s/ John A. Yanchunis

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**Admission Forthcoming*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 22, 2021, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ John A. Yanchunis
John A. Yanchunis